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December 2, 2002

BY HAND

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Attn: Edward Clark, Desk Officer for the
Federal Maritime Commission

Re: FMC Dkt 02-15 (Passenger Vessel Financial Responsibility): Rule-making Regulatory Requirements – Paperwork Burden Estimate, 5 U.S.C. § 605 Certification, and Need for Cost/Benefit Analysis.

Dear Gentlemen:

We are writing on behalf of Royal Caribbean Cruises Ltd. ("RCL")[1/] in regard to the regulatory responsibilities of the Federal Maritime Commission ("FMC") under the Paperwork Reduction Act and the Regulatory Flexibility Act in connection with the subject Notice of Proposed Rulemaking ("NPRM"), which was published in the Federal Register on Thursday, October 31, 2002 (67 Fed. Reg. 66352) (the "Proposed Rule").

Specifically, we are concerned that the FMC, in developing the Proposed Rule, has failed to fully appreciate and carefully consider the huge potential adverse impacts and burdens which the proposed rule changes would impose on the cruise industry. These changes will impact not only the passenger vessel operators ("PVOs"), but also the thousands of travel agencies across the country -- mostly small businesses – as well as the numerous small business suppliers and service providers, that work with and are dependent upon the cruise industry. As a result of the failure to appreciate and properly consider these impacts, the FMC has failed to fulfill its responsibilities under the Paperwork Reduction Act (44 U.S.C. § 3501 *et seq.)* and the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.).*

We respectfully request that the Director of the Office of Management and Budget ("OMB") disapprove the proposed information collection requirements in their present form, and so notify the FMC as provided in 44 U.S.C. § 3507. We further request that the FMC (i) reconsider the

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1/ RCL, a pubhcly-held company listed on the New York Stock Exchange, is a global cruise vacation company that operates Royal Caribbean International, the world's largest cruise brand, and Celebrity Cruises, both of which participate m the FMC's financial responsibility program.

Proposed Rule in light of its responsibilities under the Paperwork Reduction Act and Regulatory Flexibility Act, (ii) determine whether the collection of information proposed in the Proposed Rule is necessary and compliant with the Paperwork Reduction Act, (iii) conduct the initial regulatory flexibility analysis described in 5 U.S.C. § 603, and (iv) delay the rulemaking until the FMC has complied with, and conducted the analyses required by, the Paperwork Reduction Act and the Regulatory Flexibility Act.

Moreover, while we recognize that the FMC, as an independent regulatory agency, is exempt from the formal requirements of Executive Order 12866," the impact of the Proposed Rule is such as would otherwise qualify the instant rulemaking as a "significant regulatory action" under such Executive Order. We therefore respectfully urge the FMC, as a matter of reasoned decision-making and sound discretion, to carefully assess all costs and benefits of the Proposed Rule and any available regulatory alternatives, before proceeding with the Proposed Rule.[3/]

History of the Rule: The NPRM proposes to amend the FMC's "Passenger Vessel Financial Responsibility" regulations, which are set forth in 46 C.F.R. Part 540. These regulations were originally promulgated by the FMC in 1967 (32 Fed. Reg. 3986-91 (Mar. 11, 1967)), to implement Public Law 89-777 (the "Act").[4/] Section 2 of that Act requires PVOs to establish evidence of financial responsibility to pay judgments for personal injury or death of passengers. Section 3 of the Act requires PVOs to establish their financial responsibility to indemnify passengers for nonperformance of water transportation.[5/] This latter provision, which is the primary focus of the Proposed Rule and these comments, arose out of several instances in the early 1960's where passengers who had booked cruises on chartered vessels were left stranded at the docks, without any remedy, when the chartered vessels failed to show up and the charterers disappeared without a trace.[6/] Section 3, while covering all passenger vessels, was directed primarily at such irresponsible vessel charterers and other "fly-by-night" operators.[7/]

[2/] ***58*** Fed. Reg. ***51735*** (Sept ***30,*** 1993), ***as amended by*** Exec Order 13258 (67 Fed. Reg 9385; Feb. 26, 2002).

[3/] These comments are limited to the regulatory requirements applicable to the proposed rulemaking. Comments on the Proposed Rule itself will be submitted under separate cover at a later time, consistent with the comment period established in the NPRM, as such comment period may hereafter be enlarged.

[4/] 80 Stat. 1356, 1966 U.S Code Congr. & Admin. News (80 Stat) 1582-84, *codified,* ***as amended,*** at 46 U.S C. App. 817d-e

[5/] Pub. L. 89-777, Section 3, 80 Stat at 1357-58, ***codified, as amended,*** at 46 U.S.C App 817e.

[6/] As explamed m H. Rep No. 1089, 89th Congr., 1"' Sess (1965), "Unfortunately, the [ocean cruise] traffic [from U.S. ports] has attracted also a number of operators of questionable financial responsibility, operating aging vessels with lower safety and sanitary standards. This has resulted in several instances where scheduled cruises were suddenly cancelled by the cruise operators at the last moment Passengers have been left on the dock, and have lost passage moneys which they have paid" (*id.*, at 2)

[7/] As then FMC Chairman Admiral Harllee testified with respect to the original proposed version of the legislation, "H.R 10327 . . goes to the protectron of the public from irresponsible charterers of ships. We do not think that either the Amerrcan-flag lines, such as United States Lines or Grace, or the foreign lines like Cunard or Holland-America, need to submit any bonds, because there is no record of defaulting with them. To make them

By its express wording, Section 3 sets up a two-track scheme for establishing financial responsibility. Specifically, Section 3(a) requires each PVO either (1) to provide such *information* as the FMC may deem necessary to establish the PVO's financial responsibility, *or in lieu* thereof, (2) to provide a bond or other acceptable *form of security*. The title of Subsection (a), "Filing of ***Information or*** Bond with Commission," highlights this two-track scheme right up front (emphasis added). The text of Section 3(a) further confirms, and sets forth in greater detail, this dual-track scheme. Thus, Section 3(a), as presently codified, states as follows:

> **"(a) Filing of Information or Bond with Commission. No** person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States port without there first having been filed with the Federal Maritime Commission such ***information as the Commission may deem necessary to establish the financial responsibility of the person*** arranging, offering, advertising, or providing such transportation, ***or in lieu thereof*** a copy of ***a bond or other security,*** in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation." (46 U.S.C. App. 817e(a)(2002); emphasis added.)

The Act thus specifically contemplates a regime under which established, financially sound operators would be able to establish their financial responsibility solely through the submission of sufficient financial information.[8/]

However, with one exception (self-insurance, discussed below), the FMC has always required some more concrete financial assurance. Specifically, the FMC has required every PVO to provide proof of coverage in an amount no less than 110% of the highest amount of the PVO's "unearned passenger revenue" ("UPR") during the prior *two* years, *subject to a ceiling or cap*.[9/] Initially established at $5 Million ("M"), this ceiling was increased to $10M in 198 1, and most recently to $15M in 1991.[10/] The ceiling in effect recognizes, consistent with the statutory intent, the financial soundness and reduced risk presented by the larger, more established

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license themselves in the manner of financial defaultmg would be clearly overregulation." *Coastwise* Cruise ***Regulations: Hearings before the Subcomm. on Merchant*** *Marine of* ***the House Comm. on Merchant Marine & Fisheries, 89"*** Congr. , 1st Sess., at 70 (1965)

8/ As explained m S. Rep. No 1483, 89th Congr., 1" Sess., 1966 U S. Code Congr. & Admm News 4176, 4182, Section 3 "provides for the filing of evidence of financial security or m the alternative a copy of an acceptable bond or other security because many persons operating in the cruise business are responsible and mamtam sufficient assets in this country which could be proceeded against." As stated by former FMC Commissioner Ivancie in his "Report to the Commission" m Fact Finding Investigation No 19, "Congress envisioned two options," and "[b]onding appears to be a secondary option in the event that an operator is not financially secure." ***(Investigation -- Passenger Vessel Fmancial Responsibility*** *Requirements* (hereinafter ***"FF-19*** *Final* ***Report"),*** at 13-14, 25 S RR. 1475, 1479 (April 11, 1991))

9/ 46 C F R §§ 540.5, 540 6(b) & 540.9(j)

10/ See NPRM, 67 Fed Reg at 66352 & n.4.

PVOs.[11] The ceiling also ameliorates the harsh and unjustified financial burden and impact that would have resulted from requiring full coverage by such PVOs.[12]

UPR is defined generally by the FMC as being "that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed" (46 C.F.R. § 540.2(i)). This definition is ambiguous in certain regards. Most importantly, the definition fails to provide a "bright line" test as to precisely what revenues are, or are not, includible in UPR. This is particularly important with respect to revenues for ground and air transportation purchased as part of or ancillary to a cruise.[13] The existence of the UPR coverage ceiling has obviated, at least for the larger carriers, the need to address and resolve these issues.

Historically, the FMC has recognized a number of different means by which a PVO could provide the required UPR coverage, including (i) insurance, (ii) guaranties, (iii) surety bonds, and (iv) escrow accounts. For a number of years, and as the one exception to the general concrete coverage requirement discussed above, the FMC also permitted certain established carriers, meeting specific net worth standards considering only U.S.-based assets, to self-insure. This alternative was eliminated by the FMC this past summer, after the largest self-insured carrier filed for bankruptcy last year, leaving thousands of passengers without recourse.[14]

The Proposed Rule and Its Potential Impacts: The FMC is now proposing "to ***eliminate the ceiling*** on [UPR] coverage requirements, and to ***require coverage bused on the total amount of UPR*** for ***all PVOs***" (67 Fed. Reg. at 66353; emphasis added). For those large carriers "whose fleets consistently have outstanding UPR in the hundreds of millions of dollars" (id.), this will result in coverage increases in the ***thousands*** of percent. The NPRM recognizes that "this [increased coverage] could be costly to many in the industry," and specifically acknowledges ***"the tremendous cost and difficulty that may be faced by some PVOs in covering all UPR*** (as

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11/ In rejecting an earlier proposal to do away with the UPR coverage ceiling and instead imposing the present increased $15M cap in 1990, the FMC specifically acknowledged that its records "support the contentions of the larger operators concerning their record of performance," and that "[t]he most recent passenger vessel failures have involved new or small operators" (FMC Fmal Rule in Dkt 90-01, published at 55 Fed. Reg. 34564 (Aug 23, 1990).)

12/ As stated by Commissioner Ivancie, "The Commission has always interpreted Section 3 as mandating a reasonable ceiling on the size of the security required of a cruise operator . . The Commission has consistently interpreted the statute as requmng financial responsibility, not financial guaranty. The Commission has also recognized that a dollar-for-dollar bonding requirement would unnecessarily increase an operator's cost of doing business" (FF-19 *Final* ***Report*** at 15, 25 S.R.R. at 1479.)

13/ As noted by Commission Ivancie in his ***FF-19*** *Final* ***Report,*** "the Commission's authority extends ***only*** to the sea portion of ***the trip"*** (25 S RR at 1487, emphasis added) Nevertheless, from time-to-time, the FMC Staff has informally suggested that the sea and land portions of a vacation package should be included in UPR under certain circumstances.

14/ See FMC Dkt 02-07, Final Rule (67 Fed. Reg 44774, July 5, 2002), discussed in the NPRM at 67 Fed Reg. 66352. The elimination of self-insurance already has remedied the principal problem cited by the FMC as justification for the present rulemakmg

currently defined)" (id.; emphasis added). However, this burden is *not* limited to just the cost of a bond or guaranty, as was mentioned by the Staff during the FMC's October 23, 2002 Sunshine meeting (assuming bonds or guarantees are even available in the proposed coverage amounts). Having even greater impact, the burden also includes the amount of capital in the full amount of the bond or guarantee that any surety is almost certain to demand in today's tight, post-9/11 risk assurance market for coverage in the very substantially increased proposed amounts (assuming, of course, that PVOs could even come up with the necessary excess capital in any reasonable period of time). Of course, the burden also includes the very substantial interest cost on such additional capital.

In a stated attempt to partially ameliorate the perceived adverse impact of the proposed increased coverage requirement, and at least avoid the extra costs of double-covering UPR amounts that are subject to the consumer protection provisions of the Fair Credit Billing Act ("FCBA") (15 U.S.C. §§ 1666-1666j), the Proposed Rule proposes to except from UPR those passenger revenues received from credit card charges made within 60 days of sailing ("Excepted Passenger Revenues" or "EPR") (67 Fed. Reg. at 66353-54). Thus, to prove financial responsibility under the Proposed Rule, a PVO would have to give the FMC a surety bond or a guarantee issued by a P&I Club for, or escrow, the full amount of the PVO's highest UPR less EPR in the prior two years, **plus** a fixed ten percent surcharge on the amount of such peak UPR unadjusted by EPR.[15/]

While eminently reasonable to avoid double coverage, the exclusion of the identified credit card charges does little to reduce the immense increased financial burden which the Proposed Rule would impose on the larger PVOs. Moreover, the creation of a new category of information that must be tracked – EPR – imposes new information gathering and reporting requirements, the mechanics and full impacts of which have yet even to be ascertained, much less considered, by the FMC. Moreover, the impact of these proposed changes may not be limited, as the NPRM appears to assume, just to the PVOs. Thus, tracking EPR may also implicate and involve in the required new information gathering and reporting process the many thousands of individual travel agencies selling cruises. These travel agencies also could be adversely impacted, and find that their booking commission payments have to be delayed, if the FMC requires full UPR coverage of such amounts until performance is rendered and complete.

In addition to the above, the Proposed Rule increases the frequency of existing reporting requirements from semi-annually to quarterly, and effects other reporting requirements changes.[16/] The Proposed Rule also proposes to establish and impose a new ***mandatory*** Alternative Dispute Resolution ("AD,") process to resolve passenger nonperformance claims

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15/ 67 Fed. Reg. at 66354-55 & 66357-58 (proposed new 46 C F R §§ 540 5 & 540.6(b)) The NPRM does not explain the basis or rationale for the proposed 10% fixed surcharge, which effectively further increases the total proposed coverage requirement to ***110% of peak UPR.***

16/ ***Id.,*** at 66354-55, 66358 (proposed new 46 C F.R § 540 8(b)) & 66361 (proposed new 46 C.F.R. § 540 28)

that remain unresolved after six months.[17] This process would be imposed through proposed new mandatory provisions in all UPR coverage agreements. Obviously, imposition of this new requirement will impact a wide community extending far beyond PVOs, including the sureties, guarantors and escrow agents to which the PVOs have to look to provide or administer the required coverage. Moreover, the proposed new ADR process implicates a diversion of the FMC's already limited resources, which could potentially adversely impact the FMC's ability to carry-out its existing statutorily-mandated responsibilities.[18] This could adversely impact a considerably broader spectrum of FMC user interests.

The Certification Required by 5 U.S.C. § 605 and the Regulatory Flexibility Act: The NPRM states that the Chairman of the FMC has certified, pursuant to 5 U.S.C. § 605, "that the proposed rule would not have a significant impact on a substantial number of small entities" (67 Fed. Reg. at 66356). The effect of this certification is to relieve the FMC from compliance with other requirements of the Regulatory Flexibility Act (5 U.S.C. § 605). Foremost among these requirements is Section 603 (5 U.S.C. § 603), which requires an agency promulgating regulations to conduct an initial regulatory flexibility analysis.

We believe that the FMC's Regulatory Flexibility Act certification was made without a full understanding and appreciation of the potential impacts of the Proposed Rule, and is erroneous. We respectfully urge that the certification be reconsidered in light of the instant comments, as well as the comments that undoubtedly will be submitted by others on the Proposed Rule.[19] As we hope is clear from the instant discussion, the Proposed Rule will have a huge adverse impact on the entire cruise industry. The Proposed Rule thus likely will have significant direct impacts on the substantial number of small businesses, including the thousands of travel agents, suppliers and service providers who do business with, and are in large part dependent upon, the cruise industry.

First, and as the NPRM acknowledges, but appears to appreciate to only a very limited degree, the Proposed Rule will have a huge adverse impact on PVOs. Under the current $15M ceiling,

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[17] ***Id.,*** at 66355 & 66359 (proposed new 46 C F.R § 540.10(e)) The NPRM does not discuss or establish the FMC's authority to impose ADR with respect to such claims, which the FMC traditionally has recognized as bemg outside its jurisdiction and authority.

[18] In recently opposmg sovereign immunity claims by a state port authority, the FMC specifically cited its limited resources as a reason that the FMC needed to continue its prior reliance on private complamts, rather than undertake its own investigations, to vindicate Shipping Act interests The FMC's objection was rejected by the courts. ***See South Carolina State Ports Authority v. FMC, 243*** F 3d 165, 178 (4th Cir. 2001), *aff'd*, ***535*** U S 743, 122 S.Ct 1864 (2002) ("If the FMC needs more resources to ensure compliance by state agencies, Congress may of course authonze additional funds.")

[19] As set forth in the NPRM, the present deadline for comments on the Proposed Rule, including the applicability of the Regulatory Flexibility Act, is Wednesday, January 8, 2003. RCL is submitting the instant comments with respect to the Regulatory Flexibility Act now, however, because comments on the Paperwork Reduction Act burden estimate are due at this time, and RCL believes that all of the rulemakmg regulatory requirements are interrelated and best addressed together However, RCL reserves the nght to supplement these comments within the time for comments on the Proposed Rule.

PVOs are able to provide the required proof of financial responsibility to the FMC by means of surety bonds, guarantees or escrow accounts.[20] Each of these alternatives has generally been available in amounts up to the presently required $15M ceiling, albeit availability and terms have become considerably tighter in the post-9/11 risk assurance market. The cost of providing this coverage varies depending on the particular option that each PVO chooses, as well as the perceived riskiness of each individual PVO's financial condition. An unsecured $15M surety bond or guarantee may cost up to a few hundred thousand dollars a year. However, a secured bond or guarantee, or an escrow account, must be funded on a dollar-for-dollar basis with up to $15M of capital -- a sizable drain on any company's working capital and resources.[21] The interest cost on such capital far exceeds the nominal interest available on security accounts in today's financial markets, and thus substantially increases the cost and burden of providing the required coverage.

However, these present burdens and costs pale besides, and are de *minimis* compared to, the huge additional burdens and costs which implementation of the Proposed Rule would impose on the larger carriers. Thus, we are not talking here about a $5M coverage increase, such as the FMC imposed on the industry when the FMC increased the ceiling from $5M to $10M in 1982, and again from $10M to $15M in 1991. As the FMC recognized in 1990, even a $5M increase is a substantial burden for cruise lines, since "(clash flows are needed to meet operating expenses and other operational commitments to service debt and are, therefore, not readily accumulated in the short term" (Dkt 90-01, Final Rule; 55 Fed. Reg. 34564; Aug. 23, 1990).[22] The Commission therefore provided a six-month transition period before implementing the $5M ceiling increase *(id.)*.[23]

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[20] The present FMC regulations also permit insurance to be used (46 C.F.R. § 540.5(a)) However, as the NPRM notes, "[I]nsurance has never been used by any PVO to provide performance coverage, and it appears in any event to be inappropnate as a device for providing such coverage" (67 Fed. Reg. at 66354) The NPRM therefore proposes to eliminate insurance as an option ***(id.,*** and see 67 Fed. Reg at 66357 (proposed new 46 C.F R § 540.5))

[21] See FMC Dkt 90-01, Final Rule (55 Fed. Reg. 34564, Aug 23, 1990), in which the FMC acknowledged that "the evidence of financial responsibility which carriers have posted ***in most cases must be fully collateralized by cash or equivalents*** as a requirement of underwnters providing such evidence. The underwnters generally will not issue a bond or other evidence unless it IS supported by cash deposits or equivalents" (emphasis added). It is likely that this statement is even more true in today's tight, post-9/1 1 nsk assurance market.

[22] As Commissioner Ivancle pointed out in his ***FF-19 Final Report,*** PVOs "must make a number of purchases for such matters as airline tickets, hotel rooms, rental cars, food, fuel and other supplies . [which] are paid in advance of a sailing," and "it is the industry's practice to use . [advance passenger payment funds] as workmg capital" ***(id.,*** at 7, 25 S RR at 1477). Commissioner Ivancie also stated that "[I]t is more advantageous for the industry to pay down capital loans and lines of credit, than to deposit funds to earn interest" ***(id.).*** This last statement is even more true in today's low interest-paymg environment.

[23] Significantly, the NPRM says nothing about any phase-m or transition penod for implementing the Proposed Rule. This conspicuous omission further suggests that the FMC simply does not appreciate the full effect and impacts of the Proposed Rule.

Here, in contrast, for those PVOs that "consistently have outstanding UPR in the hundreds of millions of dollars" (67 Fed. Reg. at 66353), the FMC is now talking about imposing a many-fold increase -- in the thousands of percent range -- in the amount that would be required to be covered. For example, a PVO having UPR (as defined today) of $350M, of which 20% might qualify as EPR, would be required to provide coverage in the amount of $315M[24/] – a $300M, or 20-fold (2000%) increase in coverage vs. the $15M required under the present ceding. This effectively is equivalent to requiring a single PVO to reserve and set-aside the entire amount that it would cost to buy a large, new cruise ship.[25/] Only here, instead of generating revenue, jobs and flow-down economic benefits for the economy,[26/] the money would be sitting idle, earning virtually nothing, while encumbering the PVO's credit-worthiness and ability to borrow funds for other productive purposes.

It appears, from the discussion on the Proposed Rule at the FMC's October 23, 2002 Sunshine Meeting, that the FMC may be under the misapprehension that the impact of the proposed elimination of the UPR ceiling would be limited just to the proportionally higher out-of-pocket cost to buy a larger bond. Thus, in response to an inquiry by Commissioner Creel as to the cost of the proposed increased coverage, the Staff responded that a bond generally can be obtained for 1% to 1-1/2% of face value. The Staff's response assumes a critical, yet-to-be established, predicate – namely, whether bonding in the proposed substantially increased coverage amounts is available at any cost – an issue as to which past comments submitted to the FMC suggest there may be considerable doubt." However, assuming for present purposes that bonding is available

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24/ This amount is achieved by subtracting the $70M EPR from the gross $350M UPR, which results in a difference of $280M, and then adding the proposed fixed 10% surcharge on the $350M gross UPR – i.e., $35M – to get $315M. Please note that the 20% used for EPR is merely for demonstration purposes, and should not be taken to suggest that such percentage is a likely or realistic estimate of any PVO's actual EPR.

25/ Carnival Corp.'s latest quarterly report (Form 10-Q) for the quarter ending August 31, 2002, lists the estimated cost of the 2,114 passenger ***Costa** Mediterranea*, which is presently under construction at Masa-Yards for delivery to Costa Cruises in June 2003, as $355M (id. at 7)

26/ In 200 1 the cruise industry's contribution to the U.S. economy consisted of $11 billion in direct spending by cruise lines and then passengers. Including indirect economic benefits, this direct spendmg in turn generated $20 billion m U S industrial output, producing more than 267,700 lobs throughout the country paymg a total of $9 7 billion in wages and salaries. See Business Research & Economic Advisors, "The Contnbution of the North American Cruise Industry to the U.S. Economy m 2001," prepared for the International Council of Cruise Lmes (Aug. 2002), at 1-4.

27/ As the FMC noted last summer in reviewing the comments received in Docket 02-07, the International Group of P&I Clubs made "clear that its members would not be willing to increase their current mvolvement" in providing security under the Section 3 nonperformance program (FMC Dkt 02-07, Final Rule, 67 Fed. Reg at 44775, July 5, 2002; emphasis added). This is significant because of Commissioner Ivancie's fmdmg that, at least as of 1991, "Sixty-five percent of the cruise operators certified with the Commission have coverage with Protection and Indemnity Clubs," which provide Section 3 coverage solely "as an accommodation to the cruise operators" (*FF-1* 9 *Final* ***Report*** at 16, 25 S R.R at 1480) See *also* the Apnl 4, 1994 and August 15, 1996 comments of the Surety Association of America in FMC Dkt 94-06, expressing strong reservations -- long pnor to the events of 9/1 1, which have substantially tightened risk assurance availability -- as to the availability of sufficient bondmg capacity to support the lower UPR coverage increases then bemg proposed The Surety Association specifically pointed out that "the market for PVO bonds is very limited, and that the larger the bond amount required, the stricter the underwriting requirements and more difficult it becomes to qualify for the bond" (Letter dated August 15, 1996, at 2) The Surety Association stated

at the cash payment cost cited by the Staff, the increased cost impact on the industry would be very substantial. Thus, using the previously stated example, at 1-1/2% the increased out-of-pocket ***annual*** bond cost for $315M in coverage for a single cruise line would be ***$4.5M*** ($4.75M vs. $0.225M for a $1 5M bond). While the Staff suggested, without itemizing the amount, that such increased costs should not be too harsh in the context of total PVO revenues, the cost nevertheless is still clearly very substantial in absolute terms and comes directly out of bottom line profit.

However, the real problem is that this out-of-pocket cash cost -- substantial as it is -- is only the tip of the iceberg of the costs that the Proposed Rule would impose on PVOs. Thus, as the FMC previously has recognized, "underwriters generally will not issue a bond or other evidence unless it is supported by cash deposits or equivalents."[28/] This means, as discussed above, that the PVO would have to obtain and put aside some form of dollar-for-dollar coverage for the principal amount of the bond. This would require PVOs to have to borrow or otherwise tie-up huge amounts of capital, and incur the associated high interest cost of such capital. While we do not know the total amount of presently uncovered UPR, it is not unrealistic to expect that this could mean sucking as much as $2B or more in capital out of the cruise industry.[29/]

While the cruise industry has made a remarkable recovery from the impact of 9/11,[30/] the imposition of the proposed huge new burden on the industry at this time would have impacts which the FMC has not even started to examine or appreciate. These impacts could be particularly serious for some of the smaller, weaker PVOs, and could act as a substantial deterrent to new entrants. Moreover, the timing of the FMC's proposal could hardly be worse in view of the substantial capital commitments that many of the larger, financially stable carriers have made to the new ships that will be coming on line over the next several years, as noted in the NPRM (67 Fed. Reg. at 66353 & n.7), and which are the harbingers of a new era of growth for the cruise industry."-"

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its "doubt that many existing PVOs would be able to immediately qualify for the higher bond amounts," and that "[t]he end result could be a severe lack of availability of bonds for PVOs which could compel some PVOs to seek other forms of security, or to leave the business" (*id.*).

28/ FMC Dkt 90-01, Final Rule (55 Fed. Reg. 34564; Aug 23, 1990).

29/ Commissioner Ivancie stated that the uncovered UPR in Apnl 1991 was more than $750M, and that the trends in the industry were such that the amounts of UPR could be expected to ***grow*** (*FF-19* ***Final Report*** at 25, 37; 25 S.R.R. at 1482, 1486).

30/ Accordmg to the Cruise Lines International Association ("CLIA"), the number of N. American cruise passengers in the first nine months of 2002 is ***up by*** 7.6% over the comparable penod m 2001 (5 691M passengers in 2002 vs. 5.289M m 2001), and well on the way to meetmg the mdustry's target of a ***record 7.4M cruise passengers*** in 2002 (vs. 6.9M in 2001 and 3.7M in 1990 (see *FF-19 Final* ***Report*** at 3; 25 S.RR at 1476)) The 2002 growth is essentially m line with the 8 4 percent ***annual*** passenger growth rate that the mdustry experienced from 1980 to 2001.

31/ Rather than bemg "an indicator of concern," as apparently perceived by the FMC (67 Fed. Reg at 66353), the commitments to this new capacity reflect the contmumg vitality and growth of the cruising industry, and cruise management's belief and commitment thereto. Such contmumg growth is consistent with past trends. As noted by Commissioner Ivancie in 1991, "During the last decade [i.e , 1981-90], there was an average growth rate of 7.5% in

Second, the Proposed Rule's impact will not be limited to PVOs. Only would be expected with anything of the magnitude discussed above, the impact of the Proposed Rule will extend to all those who do business with the cruise industry. This impact will be felt particularly heavily by the thousands of small businesses, including travel agencies, suppliers and service providers, which are, in substantial part, dependent upon the cruise industry. For example, there are approximately 37,000 travel agencies in the United States[32] -- most of which likely qualify as "small entities" within the meaning of the Regulatory Flexibility Act. Of these, some 17,000 are actively affiliated with the Cruise Lines International Association ("CLIA"). This affiliation suggests that at least this number of travel agencies are actively involved in marketing cruises. Indeed, in view of the slowdown in air travel since 9/11 and the decision of most, if not all, airlines to eliminate commissions to travel agents, the cruise industry has become an increasingly important element of travel agencies' business.[33]

Similarly, a sizable portion of the $11B in direct spending by cruise lines and their passengers (see Fn. 23 above) no doubt goes to and benefits small businesses. Anything of the magnitude of the instant proposed rulemaking which could threaten the economic well-being and continued growth of the cruise industry will have significant adverse impacts on such small businesses.

Tellingly, the American Society of Travel Agents ("ASTA") submitted comments in FMC Dkt 90-01, specifically opposing an earlier FMC proposal to do away with the UPR ceiling. ASTA stated that an "unlimited funding requirement . . . ***would only increase prices without providing a meaningful increase in protection***."[34] ASTA stated that while it is ASTA's policy to generally support consumer protection systems, it does so only where "the protection is commensurate with the risk," so that the consumer, who ultimately must pay for it, is not burdened by "unnecessary costs" *(id.* at 2).

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new berths," and "[t]his pattern of new construction [wa]s expected to continue at least for the next five years" (*FF-19* Final ***Report*** at 4; 25 S.R R. at 1476). It was the industry's commitment to such continuing growth then which enabled the industry to double the number of passengers served from 3.7M in 1990 to an estimated 7 4M this year The same is true now. Indeed, the present capacity growth is necessary to keep pace with the continuing growth in the number of cruise passengers (see Fn. 30 above), and to serve the new "cruise and drive" markets which have been developed and are rapidly expanding at non-traditional cruise ports all along the U.S. coastlines since 9/11 (see "Cruises Offer Better Vacations from More Ports," www cruising.org/cruisenews/news.cfm?NID=119; Oct 22, 2002) It is telling that, far from trying to stretch-out, defer or cancel new ship commitments in the post-9/11 market (as has been the trend m the airline industry), several PVOs, including RCL and Carnival, actually have ***accelerated deliveries*** and/or committed to buying ***additional new ships*** since 9/11. However, the capital commitments that have been obligated to pay for such new buildings over the next few years leave little room for the industry to try to absorb the huge new capital obligations implicit m the Proposed Rule

[32] See the website of the American Society of Travel Agents ("ASTA"), <http://www.astanet com/about/faq asp> (viewed on November 22, 2002)

[33] It is estimated by CLIA that 95% of all cruises are booked through travel agents

[34] See ASTA's April 4, 1990 submission in FMC Dkt 90-01 (emphasis added), discussed and quoted in *FF-19 Final* ***Report*** at 24; 25 S.R.R at 1482.

The potential adverse impacts of the instant Proposed Rule on travel agencies are not limited to the chilling impact which the costs of the proposed coverage increases could have on the continued growth in cruise bookings (which growth has greatly benefited from the competitive pricing which wrongfully appears now to trouble the FMC). The proposed rule also could delay booking commission payments to travel agents, if such amounts have to be withheld for UPR coverage purposes.[35/] The adverse impact of such payment delays on cash flow could be particularly serious for small businesses, which already are struggling with the cut-off of air carrier commission payments.[36/] In addition, the proposed requirement to track EPR could require the flow-down to travel agencies of the proposed information gathering and reporting requirements with respect to credit card charges. This is particularly so where the travel agent is creating and selling a travel package including a cruise, and customer payments therefore are made directly to the travel agency, rather than to the PVO.[37/]

In short, it is clear, contrary to the FMC's certification, that the Proposed Rule has the potential to significantly impact thousands of small businesses across the entire country. The FMC's failure to appreciate and take such impacts into consideration require that the FMC's certification be withdrawn and reconsidered, and ultimately that the FMC undertake the full-scale initial regulatory flexibility analysis, required by 5 U. S.C. § 603.

Executive Order 12866 and the Need for a Full Cost/Benefit Analysis: The potential huge adverse impact of the Proposed Rule on the cruise industry discussed above mandates, as a matter of sound discretion and reasoned decision-making, that the FMC conduct a full cost/benefit analysis, including all regulatory alternatives. Executive Order 12866 sets forth the model and standard for such an analysis. As stated in the Executive Order, such an approach is essential to "improv[ing] the performance of the economy without imposing unacceptable costs on society," and to "recognize that the private sector and markets are the best engine for economic growth" (id., Preamble).

Specifically, Executive Order 12866 mandates that agencies, as defined in Section 3(b) of the Order, "should ***assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating,"*** in deciding whether and how to regulate ***(id.,*** § 1 (a); emphasis added). Such analysis is to include both quantifiable and qualitative measures of costs and

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35/ Travel agency commissions generally are deemed earned, and are paid to, or retained by, the travel agency upon full customer payment for the booked cruise This is usually well in advance of vessel sailing

36/ It has been estimated that as many as 25% of all travel agencies have gone out of business since 9/11.

37/ In addition, it is unclear from the NPRM whether the proposed new definition of "prmcipal," which is broadly defined so as to literally encompass travel agencies (see 67 Fed Reg. at 66357 (proposed new 46 C.F.R. § 540.2(k)), is mtended to suggest a change in the FMC's past practice (see FMC Dkt 66-67, Final Rule, 32 Fed. Reg. 3987 (March 11, 1967)), and require travel agencies to now file for their own Certificates of Financial Responsibility. Obviously, such a change, if intended, would impose very sizable additional burdens on every travel agency sellmg cruises

benefits (id.). "[I]n choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits" (id.).

We recognize that the FMC, as an independent regulatory agency, is not strictly governed by and required to comply with this Executive Order.[38] Nevertheless, we believe that reasoned decision-making, and sound and proper discretion, mandate that the FMC engage in a comparable analysis here, given the unquestionably huge potential costs and impacts of the Proposed Rule, as discussed in the preceding section of these comments. Indeed, Executive Order 12866 defines "Significant regulatory action" as "any regulatory action that is likely to result m a rule that may: (1) Have an annual effect on the economy of $100 million of more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs . . ." (id., § 3(f)). Drawing up to $2B and possibly more in capital out of the cruise industry, at an annual cost of capital in the hundreds of millions of dollars, and threatening the ability of some cruise lines to continue operating, and jeopardizing competition and the jobs and livelihood of thousands of travel agencies and small businesses across the country, clearly fits within these parameters.

Such a cost/benefit analysis is particularly important here because it is readily apparent from the NPRM that the Proposed Rule does nothing to solve the only real problem identified in the NPRM. Indeed, that problem already has been eliminated. Thus, the NPRM cites the fact that "five cruise lines that participated in the Commission's program have ceased operations" since September 2000 (67 Fed. Reg. at 66353). However, the NPRM identifies only one of the five lines as having resulted in passengers not being fully reimbursed out of carrier assets, existing UPR coverage or FCBA coverage. That single line was American Classic Voyages ("AMCV"), which "had evidenced its financial responsibility by means of self-insurance" (id.). However, as the NPRM acknowledges, that problem already has been solved by the FMC's elimination last summer of the self-insurance alternative for UPR coverage.[39]

Noting that "[a]ll costs of consumer protection systems are eventually paid by all consumers of the transportation product," the American Society of Travel Agents ("ASTA") in 1990 strongly urged the FMC to undertake a similar cost/benefit analysis before following-through with the then proposed elimination of the UPR coverage cap. As stated by ASTA:

> "All costs of consumer protection systems are eventually paid by all consumers of the transportation product. ASTA's policy has been to support consumer protection systems in which the protection is commensurate with the risk. By tailoring the protection in this way, the consumer is protected without having to bear unnecessary costs.

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[38] See Exec. Order 12866, § 3(b), which defines the agencies subject to the Executive Order so as to exclude "mdependent regulatory agencies, as defined in 44 U S C 3502{1 O)."

[39] ***Id.,*** 67 Fed Reg. at 66353 ("Self-insurance is a coverage option that no longer is permitted See Docket No. ***02-07,*** *Financial Responsibility Requirements for* ***Nonperformance*** *of* ***Transportation-Discontmuance of*** *Self-****Insurance and the Sliding Scale, and Guarantor*** *Limitations,* ***67*** FR 44774 (July 5, 2002) ")

> "Before removing the cap, therefore, with the attendant upward pressure on already rising fares that might result, ASTA believes that the Commission should first evaluate alternative ways of measuring the risk to consumers to see if adequate protection from the risks of dealing with the larger lines cannot be obtained in other ways at lower costs."[40/]

In his "Report to the Commission" in Fact Finding 19, *Investigation – Passenger Vessel Financial* Responsibility Requirements (hereinafter *"FF-19 Final* Report"), 25 S.R.R. 1475 (April 11, 1991), then FMC Commissioner Ivancie similarly expressed the concern that elimination of the UPR ceiling would raise costs without necessarily increasing the individual passenger's protection:

> "If the Commission were to require a ***dollar-for-dollar*** coverage for insurance, escrow, guaranty, or surety bonds, it ***would be departing from its established policy with no reasonable justification. Costs would be raised and the individual's protection would not necessarily be increased."*** *(Id.* at 19; 25 S.R.R. at 1479-80; emphasis added.)

The FMC ultimately adopted Commissioner Ivancie's recommendation, and decided to maintain the $15M UPR ceiling.[41/]

When the FMC initiated new rulemaking efforts to again revisit the UPR ceiling less than two years later in Dkt 94-06,[42/] the leadership of the U.S. House of Representatives Committee on Merchant Marine and Fisheries wrote to the FMC expressing their surprise at the FMC's decision to revisit this issue so soon.[43/] The Committee leadership expressed its concern "that ***the proposed rule will dramatically increase the collateral requirements for most operators in the business today placing a substantial, and unanticipated, burden on these companies"*** *(id.,* at 1; emphasis added). The Committee leadership noted the potential adverse and counter-productive impact which the FMC's proposal could have on efforts to attract cruise operators to U.S. ports, and the resulting threat to new jobs and related economic growth *(id.,* at 2). The Committee leadership therefore urged the FMC ***"to undertake a complete cost-benefit analysis***

[40/] ASTA Comments, dated Apnl 4, 1990, submitted in FMC Dkt 90-01, at 2, ***quoted m FF-19*** *Final* ***Report*** at ***24-25, 25*** S.R R at 1482.

[41/] See Notice discontinuing Dkt 91-32, ***Passenger Vessel*** *Financial Responsibility Requirements* ***for Indemnification*** *of* ***Passengers*** *for* ***Nonperformance*** *of* ***Transportation; Advance Notice*** *of* ***Proposed Rulemalung and Notice*** of ***Inquiry,*** and initiating a new, more limited, proposed rulemakmg in Dkt 92-19, 57 Fed. Reg. 19097 (May 4, 1992) ("A further revision in the ceiling appears to be unwarranted at this time").

[42/] See FMC Dkt ***94-06,*** *Financial Responsibility* ***Requirements*** *for* ***Nonperformance*** *of* ***Transportation -- Proposed Rule,*** 59 Fed. Reg 15 149 (March 3 1, 1994). This Docket proceeding ultimately was discontinued this past Spring (see 67 Fed. Reg 19535, Apnl 16, 2002), after several mtenm stages, without producing any changes to the ceiling (NPRM, ***67*** Fed. Reg at 66352).

[43/] Letter dated June 24, 1994 in FMC Dkt 94-06, at 1.

of ***the full impact*** *of* ***these proposals in an effort to balance the protection*** *of* ***the consumers' dollars against the impact on the cruise industry and the related jobs and businesses here in the United States"*** (*id.*; emphasis added).

The Hon. Robert L. Livingston, then Chairman of the U.S. House of Representatives Appropriations Committee, echoed the House Merchant Marine and Fisheries Committee leadership's concerns in his own comments dated September **19,** 1996, in FMC Dkt 94-06. He similarly requested ***"that the Commission undertake a thorough cost-benefit analysis*** as part of this rulemaking" (*id.*, at 1; emphasis added). Rep. Livingston stated his hope that

> ***"this analysis would include, among other considerations, a discussion*** *of* ***the economic burden on individual companies as well as the industry as a whole; the additional costs and benefits to the vacation public; the availability*** *of* ***private market insurance alternatives and other protections available to individual vacationers; the impact on domestic suppliers and port communities*** *if* ***existing cruise operators are forced to relocate to nearby foreign*** **ports** ***to avoid the Commission's jurisdiction; and the impact on competition within the industry."*** (*Id.*, at 2; emphasis added.)

Executive Order 12866 and Rep. Livingston's comments provide a model and reasoned roadmap for the thorough cost/benefit analysis which we believe that the FMC must undertake now in connection with the instant proposed rulemaking, prior to making any decision on the Proposed Rule.[44/]

Burden Estimate and the Paperwork Reduction Act: The NPRM states that the reporting requirement in proposed new 46 C.F.R. §§ 540.8 and 540.26, and the revised application form FMC- 13 1 with accompanying vessel schedules (Form FMC- 13 1 -VS), are being submitted to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act (67 Fed. Reg. at 66356). The NPRM further states that the public burden of collecting and reporting the information that would be required under the Proposed Rule "for 42 respondents is estimated to be 684 hours annually (180 hours for Forms FMC- 13 1 and 13 1 -VS and 504 hours for sections 540.8 and 540.26)" (*id.*). The NPRM directs that comments regarding this burden estimate be submitted within 30 days of publication of the NPRM in the Federal Register – i.e., by today, December 2, 2002 (since the 30th day, November 30th, was a Saturday) (*id.*).

These comments are submitted in response to the NPRM's direction. However, we note that the NPRM does not provide the bases for the stated burden estimate. RCL has requested this

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44/ RCL notes that the NPRM specifically encourages commentors to provide cost data to assist the FMC to "thoroughly evaluate the impact of this proposed rule" (67 Fed Reg at 66356). RCL hopes that this language presages the FMC's intent to engage in precisely the needed cost/benefit analysis discussed above. RCL hopes that the FMC will extend the comment period so as to allow commentors sufficient time to prepare the requested and other data necessary to such task A time enlargement request will be filed shortly

information from the FMC under the Freedom of Information Act ("FOIA").[45] RCL expressly reserves the right to supplement these comments after the receipt of such information. Moreover, RCL notes that comments on the underlying Proposed Rule are not due until January 8, 2003. RCL respectfully submits, and hereby requests, that the comment period on the burden estimate be kept open at least until the end of the comment period on the Proposed Rule, as such may hereafter be extended. This is particularly important here because of the number of ambiguities and issues that need to be resolved with respect to the Proposed Rule, which will impact the estimated burden that would be imposed under the Proposed Rule.

However, it is readily apparent that the stated burden estimate is grossly understated for the proposed new information gathering and reporting requirements.[46] Importantly, the FMC's estimate appears to assume a readily available single computerized database containing all the needed revenue elements for each PVO. Such an integrated database simply does not exist, at least for some PVOs. Instead, gathering the necessary data may require considerable searching and hand-manipulation and tracking of data between different databases. As discussed above, it also may require flow-down of some of the information gathering and reporting requirements to travel agencies, particularly where travel agencies are packaging and selling combined cruise travel packages on their own. This, in turn, would generate the additional time-consuming and burdensome need to then integrate and consolidate that separate input.

It does not appear, at this time, that the problem is simply a matter of adjusting the FMC's burden estimate by some factor. Rather, it is an issue as to whether there is any reasonable way in which potential respondents can readily even identify, much less collect and report, the newly required revenue classification data. It may be possible to develop new computer programs that could assist in this task. However, that is speculative at this time, and the parameters would first have to be defined far more clearly than stated in the Proposed Rule.

In this regard, the Proposed Rule would require respondents to track and report, essentially on a daily basis,[47] three separate revenue data elements with respect to the nonperformance coverage alone – namely, **(1)** gross UPR, (2) EPR – i.e., credit card charges within 60 days of sailing, and

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[45] FOIA Request Letter to the FMC from RCL counsel, dated November 21, 2002, requestmg certain documents relating to issues raised m the NPRM.

[46] RCL incorporates by reference and adopts the discussion of the proposed information gathermg and reportmg burdens incident to the specific proposed forms, and required reporting of changes within five days, which is contemporaneously bemg submitted by Norwegan Cruise Lines ("NCL"). As discussed by NCL, the FMC's burden estimates with respect thereto are clearly unreasonable and without basis The instant comments will focus on other, related issues, which further demonstrate the unreasonableness of the burden estimate and other problems with the proposed information gathering and reporting requirements under the Paperwork Reduction Act.

[47] See proposed 46 C.F.R. § 540.5, which specifies that UPR coverage will be tied to "the date" reflecting the "greatest amount of [UPR]" and the possibly *different* "date" reflecting "the greatest amount of [UPR] plus {EPR]" (67 Fed. Reg at 66357). See also proposed 46 C.F.R. § 540.8(b), requmng quarterly reporting of "the highest [UPR] and the highest (EPR] accrued for each month in the reporting period" (67 Fed. Reg. at 66358)

(3) qualifying whole and partial- ship charters.[48/] Substantial issues exist as to each of these items – the resolution of which will greatly vary the true burden which implementation of the Proposed Rule would impose on respondents.

First, with respect to UPR, and as discussed previously in these comments, it is unclear precisely what the FMC requires to be included in, or excluded from, UPR. While the FMC's jurisdiction is limited to the sea transport portion only (see Fn. **12** above), the FMC Staff has from time-to-time suggested that the revenues from land and air portions of combined packages also should be included in UPR under at least certain circumstances.@!' In the absence of clear guidance, and in view of the $15M cap which effectively renders the issues meaningless for the larger PVOs, at least some PVOs have simply reported UPR including all related land and air revenues. This obviously results in a significant overstating of UPR. Were the Proposed Rule to be adopted and the UPR coverage cap eliminated, PVOs could no longer afford such laxity. These definitional issues would need to be resolved, and systems set up to separately track the various relevant revenue components.

Second, not all PVOs have systems which today track, or easily permit tracking of, EPR as presently defined.[50/] This is particularly true with respect to some cruises which are sold directly by travel agencies for their own account, as part of a combined travel package which they put together. In such instances, the PVO may not have any information as to how payment was made, and the proposed information gathering and reporting requirements therefore may need to be flowed down to the travel agencies to pick-up this data.

Third, with respect to partial-ship charters, the proposed definition is conspicuously silent and impermissibly vague as to what constitutes a "significant" part of a vessel's passenger accommodations under proposed 46 C.F.R. § 540.2(j)(i) (67 Fed. Reg. at 66357), so as to qualify for exemption from UPR. In addition to being impermissibly vague, this definition does not fit in with any commonly understood industry term. It would appear that a much broader definition, incorporating a standard industry understanding of "group" bookings, would be more appropriate.

Finally, there is no apparent basis for the proposed required dairy determination of any of these numbers. Such proposed daily tracking clearly and substantially magnifies the imposed record gathering and reporting burden -- for no apparent real purpose. A single, once-a-month number

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48/ See proposed 46 C.F R. §§ 540.2(j) & 540.5(c), at 67 Fed. Reg 66357-58, for the defmmon of "whole-ship" and "partial ship" charters which may be exempted from UPR under certain specified conditions

49/ The FMC stated in 1991 that it did not need to obtain public comment on these issues, and suggested that the FMC was going to resolve these issues within the agency (see 57 Fed Reg. 19097, at n 8; May 4, 1992) However, the FMC has not subsequently spoken on these issues, and the industry continues to await and need the FMC's guidance and direction.

50/ The NPRM does not state the basis for the proposed defmmon of EPR, and it is unclear why such definition is not at least co-extensive with the minimum protectron provided by the FCBA, which extends at least to all charges made with 60 days of the credit card charge.

(e.g., last day of the month) would appear to be more than sufficient to meet any realistic need. Indeed, it is interesting to note that the FMC's proposed standard form escrow agreement only requires business week-end (i.e., once a week) recomputing of UPR (see App. A, ¶7; 67 Fed. Reg. at 66369).

In short, the Proposed Rule is vague and imposes unnecessary and unduly burdensome information gathering and reporting requirements which go far beyond what is reasonably necessary for the proper performance of the functions of the agency, and has little practical utility. Moreover, it would appear that there is no reasonable basis for the FMC's burden estimate. These results are precisely what the Paperwork Reduction Act is intended to avoid.

The FMC therefore needs to reassess its information requirements in light of its obligations under the Paperwork Reduction Act, taking into consideration the burdens which gathering and reporting the same would impose on the industry. In this regard, the FMC should gather the necessary information as to what systems are, or reasonably could be put, in place at the various PVOs to track the minimum information which the FMC determines is truly needed and practically useful to carry out the FMC's mission.

We urge OIRA to encourage the FMC to reconsider its Paperwork Reduction Act obligations in light of the foregoing, and to revisit the Proposed Rule and burden estimate in light thereof. Once the FMC completes a proper analysis under the Paperwork Reduction Act, the FMC should republish a revised burden estimate and again invite comment and input with respect thereto.

Conclusion: The Proposed Rule, and particularly, the proposed elimination of the cap on required UPR coverage, if adopted, would have severe, adverse impacts on the entire cruise industry, including the many small business travel agencies, suppliers and service providers which work with and are dependent upon the cruise industry. These impacts have not been properly understood or anticipated by the FMC in connection with the present proposed rulemaking.

As a result, the FMC has failed to fulfill its responsibilities, and undertake the necessary analyses required to comply properly with its obligations, under the Paperwork Reduction Act and the Regulatory Flexibility Act in developing the Proposed Rule.

We therefore respectfully request that the Director of the Office of Management and Budget ("OMB") disapprove the proposed information collection requirements in their present form, and so notify the FMC as provided in 44 U.S.C. § 3507.

We further respectfully request and urge the FMC to (i) reconsider the Proposed Rule in light of the requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act, (ii) determine whether the collection of information proposed in the Proposed Rule is necessary and complies in all regards with the Paperwork Reduction Act, (iii) conduct the initial regulatory flexibility analysis described in 5 U.S.C. § 603, and (iv) delay the rulemaking until the FMC complies with, and conducts the analyses required by, the Paperwork Reduction Act and the Regulatory Flexibility Act.

We also request and urge the FMC to undertake a full and thorough cost/benefit analysis with respect to the Proposed Rule and all regulatory alternatives thereto before making any determination to proceed with the Proposed Rule or any variant thereof.

As discussed above, RCL reserves the right to supplement these comments after the FMC responds to RCL's FOIA requests and as part of the normal comment process on the Proposed Rule, as the comment period may hereafter be adjusted. RCL will file its comments on the Proposed Rule itself separately in FMC Dkt 02-15 within the established comment period, as such may hereafter be enlarged.

We very much appreciate your careful consideration and follow-up with respect to these comments. We look forward to the opportunity to meet with you at the appropriate time to discuss these comments.

Please contact the undersigned in the interim if you have any questions or would like additional information on any of the issues raised herein.

Respectfully yours,

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